

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY
IN CLERKS OFFICE**

United States District Court	District of Massachusetts
Name (under which you were convicted): Richard Gould	Docket or Case No.: 04-10248-RCL
Place of Confinement: FPC Schuylkill Minersville, PA	Prisoner No.: 25299-038
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) RICHARD GOULD

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court for the District of Massachusetts, Boston, MA

- (b) Criminal docket or case number (if you know): 04-10248-RCL
2. (a) Date of the judgment of conviction (if you know): 09/21/06

- (b) Date of sentencing: 09/20/06
3. Length of sentence: 120 months, 5 years supervised release
4. Nature of crime (all counts): Count One: Conspiracy to Possess with Intent to Distribute, and to Distribute, Oxycodone
Count Seven: Possession with Intent to Distribute Oxycodone

5. (a) What was your plea? (Check one)
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF TRIAL DEFENSE COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please see the Affidavit of Richard Gould, annexed hereto
and incorporate by reference

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____ Scott P. Lopez, Esquire
_____ 24 School Street (8th Floor)
_____ Boston, MA 02108

(b) At arraignment and plea: _____

(c) At trial: _____ same

(d) At sentencing: _____ same

(e) On appeal: same

(f) In any post-conviction proceeding: Kirk Y. Griffin, Esquire
 (For this motion) 50 Staniford Street (8th Fl.)

Boston, MA 02114
 (g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

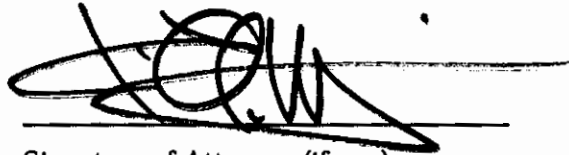
A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Vacate sentence and plea to permit change of plea under F.R.Crim.P. Rule 11(a)(2), thereby restoring right of appeal.

or any other relief to which movant may be entitled.

DATED: September 19, 2007



Signature of Attorney (if any)
Kirk Y. Griffin
50 Staniford Street (8th Fl.)
Boston, MA 02114

[t] 617.367.0966

[e] lawyeratlarge@aol.com

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. Signature by counsel of record. Movant has executed companion Affidavit filed herewith.

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Docket No: 04-10248-RCL

UNITED STATES OF AMERICA

v.

RICHARD GOULD, et. al.

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**AFFIDAVIT OF RICHARD GOULD IN SUPPORT OF HIS MOTION
UNDER 28 U.S.C. 2255 TO VACATE SENTENCE AND
PLEA TO PERMIT CHANGE OF PLEA PURSUANT TO RULE 11(a)(2)**

My name is Richard Gould, and I am presently confined at FPC Schuylkill, P O Box 670, Minersville, PA 17954 (Inmate No. 25299-038. I am the defendant in the above captioned cause, and under oath I depose and state:

1. To and including, on 09/20/06, my sentencing, I was represented by retained counsel Scott P. Lopez, 24 School Street

(8th Floor), Boston, MA 02108.

2. Mr. Lopez filed a motion to suppress oral statements attributed to me that was, after hearing, denied by the court on December 20, 2005.

3. Following the denial of the motion, Mr. Lopez and I had several discussions about what next steps would be appropriate. As a result of these discussions I elected to change my plea to guilty.

4. On January 30, 2006, I entered a plea of guilty to Counts One and Seven of the indictment.

5. I was sentenced on September 20, 2006, to a term of 120 months confinement together with five years of supervised release.

6. At the time of my sentencing, the court stated:

I will advise you, Mr. Gould, that you may appeal the conviction, your conviction, if you believe that your plea of guilty to these two counts was not voluntary and knowingly given or if you think there's some other fundamental defect in the proceedings not waived by the guilty plea.

You may also appeal the sentence I've imposed on you, particularly under certain circumstances, particularly if you think the sentence I've imposed is contrary to law.... (Sentencing Trans. p. 68)

7. Within the following week or so, Mr. Lopez visited with me at MCI Cedar Junction in Walpole, Massachusetts, where I was confined.

8. We discussed at length the question of whether or not I wished to undertake an appeal of the sentence. Mr. Lopez explained that an appellate court could review the appropriateness of the 120 month period of confinement and the period of supervision thereafter, but that was the only appellate issue I had.

9. He asked me to think it over and let him know because there were some time limitations involved if I wanted to make that appeal. I decided not to undertake an appeal of my sentence and acknowledge that he fully informed me of my rights in that regard.

10. I subsequently learned, months later, that there was a procedure by which I could have appealed the court's adverse ruling on my motion to suppress. Federal Rules of Criminal Procedure Rule 11(a)(2) provides for such a conditional plea.

11. Mr. Lopez never informed me of the procedures available by that rule. The only appeal possibilities we had conversation about was with regard to the issue of the sentence

after it was imposed.

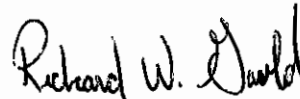
12. I believe that the court was in error regarding its disposition of my motion to suppress. As I have come to understand, my guilty plea acted as a waiver of any opportunities I had to seek further review of that ruling.

13. I believe I received ineffective assistance of counsel from Mr. Lopez because he failed to advise me of the available procedures to preserve my right to appeal the court's ruling.

13. The relief I am seeking through this motion is the reinstatement of my rights to appeal. I propose this can be accomplished by vacating my plea and consequent sentence, and allowing me to change my plea pursuant to F.R.Crim. P. Rule 11(a)(2).

14. I have not undertaken any direct appeals from the sentence and judgment of this court, nor have I filed any other motions, petitions or applications in any court except for the instant motion.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 5th DAY
OF SEPTEMBER, 2007.

A handwritten signature in black ink, appearing to read "Richard W. Gould". The signature is written in a cursive style with a large initial 'R'.

Richard W. Gould
No. 25299-038
Federal Prison Camp Schuylkill
P O Box 670
Minersville, PA 17954-0670